

MINUTES

INDIANA OPTOMETRY BOARD

FEBRUARY 10, 2010

I. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Dr. Morrow called the meeting to order at 10:00 a.m. in the Indiana Professional Licensing Agency, Indiana Government Center South, 402 West Washington Street, Conference Room W064, Indianapolis, Indiana, and declared a quorum in accordance with Indiana Code § 25-24-1-2.

Board Members Present:

Douglas C. Morrow, O.D., President
Natalie Olinger-Stine, O.D., Secretary
James Hunter, O.D., Member
Carl Golightly, O.D., Member
Stephan Van Cleve, O.D., Member

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency
Heather Hollcraft, Assistant Board Director, Professional Licensing Agency
David Mulinaro, Case Manager, Professional Licensing Agency
Liz Brown, Deputy Attorney General, Attorney General's Office

II. ADOPTION OF THE AGENDA

A motion was made and seconded to adopt the agenda, as amended.

OLINGER-STINE/HUNTER
Motion carried 5-0-0

III. ADOPTION OF THE MINUTES FROM THE SEPTEMBER 9, 2009 MEETING OF THE BOARD

A motion was made and seconded to adopt the minutes, as amended, from the September 9, 2009 meeting of the Board.

HUNTER/GOLIGHTLY
Motion carried 5-0-0

IV. APPEARANCES

A. CONTINUING EDUCATION

There were no continuing education appearances before the Board.

B. APPLICATION

There were no application appearances before the Board.

C. RENEWAL

1. Laura Zaknoun, O.D., License No. 18003009A

Dr. Zaknoun appeared before the Board, as requested, regarding the reinstatement of her expired optometry license. According to the statute and rules, a practitioner must make a personal appearance before the Board if their license is expired more than three (3) years. Dr. Zaknoun's license expired April 1, 2004. She explained to the Board that she thought she had called into our office to change her address and asked to be placed on inactive status when she moved to Arizona in 2003. Dr. Zaknoun said she never heard from our office again and did not keep up with the paperwork assuming it had been done. She decided in 2008 to come back to Indiana and was told when she called her license had been expired since 2004 and the address had not been updated. She was told the reinstatement fee and continuing education requirements as well as the procedure. Dr. Zaknoun has been practicing continuously in Arizona since 2003. Her Arizona license is currently active and in good standing. She has completed the required renewal form, paid the reinstatement fee and submitted 160 hours of continuing education.

Board action: A motion was made and seconded to reinstate Dr. Zaknoun's optometry license.

GOLIGHTLY/VAN CLEAVE

Motion carried 5-0-0

2. John Joseph Rimkus, O.D., License No. 18002197A

Dr. Rimkus appeared before the Board, as requested, regarding reinstatement of his expired optometry license. According to the statute and rules, a practitioner must make a personal appearance before the Board if their license is expired more than three (3) years. Dr. Rimkus' license expired on April 1, 1996. Dr. Rimkus let his license expire when he moved to Illinois. He is currently in private practice in Illinois. A friend is selling his practice in Gary, Indiana and he is interested in

purchasing it. He explained he did not realize he would have this issue if he let his license expire. He has not saved any continuing education certificates except for the past four (4) years. He has completed 164 hours of continuing education but is required a total of 320 hours for Indiana for his licensee and legend drug. His Illinois license is currently active, in good standing and has never been disciplined. Illinois only requires thirty (30) hours of continuing education each biennium. Ms. Vaught pointed out that Illinois requires less continuing education than Indiana and that he has been expired for seven (7) renewal cycles which would require him to have a total of 280 hours of continuing education. According to IC 25-1-8-6(d), he is required to have the renewal application, renewal fee, and payment of the reinstatement fee, required number of hours of continuing education or a sworn statement that he has complied with the continuing education requirements. Dr. Rimkus has completed the renewal application, paid the renewal fee as well as the reinstatement fee, shown 164 hours of continuing education and provided to the Board a sworn statement regarding the completion of required continuing education.

Board action: A motion was made and seconded to reinstate Dr. Rimkus' optometry license.

VAN CLEAVE/OLINGER-STINE
Motion carried 5-0-0

V. ADMINISTRATIVE HEARINGS

A. State of Indiana vs. James Phillip Montgomery, O.D.

License No. 18001562A

Administrative Cause No. 2010 IOB 0001

Re: Petition for Summary Suspension

Parties and Counsel Present:

Respondent was present and represented by Brad Hamilton
Mark Mader, Deputy Attorney General for the State of Indiana
David Fleischhacker, Deputy Attorney General for the State of Indiana
Carrie Roemer, Court Reporter

Participating Board Members:

Dr. Morrow, O.D., President (Hearing Officer)
Dr. Olinger-Stine, O.D.
Dr. Van Cleave, O.D.
Dr. Golightly, O.D.
Dr. Hunter, O.D.

Case Summary: Respondent appeared, with counsel, regarding the Petition for Summary Suspension by the State of Indiana. The Indiana Office of the

Attorney General received a complaint that the Respondent wrote eighteen (18) prescriptions for controlled substances. According to Indiana law, optometrist cannot write prescriptions for controlled substances. Respondent has used four (4) different DEA numbers to write prescriptions for Concerta, which is a Schedule II substance. The attorney general's office received a letter from Skip Beyer in Kokomo who was counseling a client for his addictions and was told he writes prescriptions for himself and if he runs out he gets his medications from Respondent. Respondent currently takes prescriptions for a number of controlled substances and feels if the Board allows him to continue practicing he poses an immediate threat to the public. Defense Counsel stated in May or June 2009, Respondent had been stopped at a local K-Mart trying to fill a prescription for Concerta he had written himself. Respondent met with Counsel and local authorities and has spent many hours regarding this. Respondent began treatment with Dr. Moe and has been in his care for the past seven (7) months regarding his addiction. Counsel indicates that even though he has this addiction that Dr. Moe feels he does not pose a threat to the public. The client that turned him in is Respondent's son who is also addicted to Concerta. Counsel states he is not giving it to the public or his clients. He stated he would like to help with the investigation and asks the Board to not suspend Respondent for 90 days while the Attorney General's office completes their investigation, in which they are willing to help with that investigation as well. The State called Dr. Montgomery as a witness. The State verified that Respondent has been licensed in Indiana since July 15, 1971. He currently practices in Kokomo and has for approximately 38 years. The State entered into evidence, States Exhibit 1, a copy of prescriptions written by Dr. Montgomery for himself. Exhibit 1 was accepted by the Board. The State entered into evidence, States Exhibit 2, a report from January 2009 until February 2010 outlining all prescriptions written for Respondent by his family physician, Dr. Ridgeway. Exhibit 2 was accepted by the Board. Mr. Mader showed Respondent an Indiana Scheduled Prescription Electronic Collection & Tracking (INSPECT) report going back to 2003-2004 with Board recognition of this. Mr. Mader asked Respondent what was on the report, in which he replied he did not know what an INSPECT report was. It was explained to him that this report includes prescriptions written by the Respondent. Respondent said K-Mart told him the computer picked up Dr. Hoshaw's DEA number to fill the prescriptions. When asked if his son was a patient of Dr. Hoshaw, he replied no. Respondent admits he wrote the prescriptions from his pad that had a false DEA number that came from the printer. The State entered into evidence, States Exhibit 3, a copy of the prescription pad. Exhibit 3 is accepted by the Board. The State asked if Dr. Montgomery's wife takes controlled substances. He responded yes to Concerta, Hydrocodone, Xanax and some patches that were prescribed by Dr. Ridgeway. The State enters into evidence, Exhibit 4, a prescription with Dr. Hoshaw's initials. Exhibit 4 was accepted by the Board. Respondent said those prescriptions were written by Respondent. The State enters into evidence, Exhibit 5, an INSPECT report for Angela, the Respondents

daughter who also takes Concerta. Her doctor is also Dr. Ridgeway. Report shows a prescription written with Dr. Hoshaw's initials that Respondent wrote as well. The State entered into evidence, Exhibit 6, a letter written by Dr. Skip Beyer, stating Respondent is giving his client Concerta if needed. Exhibit 6 was accepted by the Board. Mr. Mader clarified that the client referenced in the report is his son, Scott. When asked if Dr. Montgomery was under treatment at this time, he stated he is being treated by Dr. Moe in Carmel, Indiana once a month and has been since July 2009 for his addiction to Concerta and in helping him get over said addiction. When asked if he was seeing Dr. Moe for any other prescriptions, he said no. The INSPECT report pulled by the State shows he was prescribed Oxycodone Hydrochloride, a 30 day supply of 90 pills that he had filled on January 5, 2010. It shows Dr. Ridgeway wrote a prescription for Oxycontin slow release for a 30 day supply of 90 pills in which Respondent had filled on January 7, 2010. Both prescriptions were filled at Herbst Pharmacy. When asked if he had a controlled substance addiction, he said it was possible, but he did not think so. On January 2, 2010, he received a prescription from Dr. Ridgeway for a 30 day supply of Zolpidem and Alprazolam that was filled on January 7, 2010, both being controlled substances. On January 2, 2010, he received a prescription for Ambient that was filled on January 7, 2010. On December 28, 2001 he received a prescription for Concerta, a 30 day supply of 60 pills, which he had filled on January 5, 2010. Respondent received a prescription from Dr. Ridgeway for 30 days of Androgel, a topical testosterone replacement substance, and another 90 pills of Oxycontin. When asked how often he takes the Oxycontin and Oxycodone, he stated as prescribed for a neck and back disorder he was diagnosed with several years ago which he still suffers from. Respondent claims he has seen eight (8) neurologists for the pain. It is so severe he cannot hold his neck erect. Respondent explained to the Board that he takes his medication in the morning, afternoon and evening even when he is practicing. He has also continued to practice during this time. Defense Counsel asked Respondent why Concerta was prescribed in which he explained in 2003 or 2004 it was prescribed for narcolepsy and fatigue and he was having trouble staying alert. During that time he developed his addiction. This addiction came to light in 2009 when the issue with the K-Mart Pharmacy came up. He explained the first time he wrote the prescription on his own pad for Concerta was approximately in the beginning of 2009. He did this because he had become addicted to Concerta. When asked if the pharmacy ever questioned the DEA number, he said yes and stated that during the summer of 2009, the pharmacist called and said he needed to discuss Respondents DEA number. He stated his scripts had been running on Dr. Hoshaw's DEA number as a computer glitch. Dr. Hoshaw complained to the pharmacist. The pharmacist asked Respondent if he had a DEA number, when he responded no, the pharmacist asked if all he needed was a valid DEA number. Respondent answered yes. He then states the pharmacist got on the computer and gave him an old Phar-More DEA number to use. Respondent clarified and said it was the spring of 2009 when the issue arose. He indicated

he had written three or four prescriptions before it came to light that the prescriptions were written on Dr. Hoshaw's DEA number. Defense counsel points out that he has cooperated with Howard County authorities in this investigation. Defense counsel explained to the Board that Respondent takes Oxycontin and Oxycodone at the same time due to the time release of the Oxycontin. Respondent has been seeing Dr. Ridgeway for approximately ten years. Dr. Ridgeway is the one that prescribes all prescriptions for Respondent. He went on to explain that Respondent is not currently using these two medications but has built up a tolerance to these medications and could take the prescriptions and still function properly. He has built up from 20 milligrams to 80 milligrams to control pain. Respondent's counsel stated he does not take these prescriptions recreationally. He also stated Respondent was not writing the prescriptions for his family, he was using the prescriptions to feed his addiction to Concerta. Dr. Moe has not given Respondent any urine screens and states nothing would appear out of normal on a urinalysis if given. Defense counsel states Respondent would not object to the Board putting any conditions on his license and would be willing to comply with anything the Board sees fit so he can continue to practice optometry. Respondent told the Board he does not have much faith in rehabilitation facilities and would only refuse that as he would rather continue counseling along with urine screens and personal appearances. The state asks if Dr. Moe is aware of him still taking Concerta, he replied yes. The State asked if he has ever attended any outpatient facilities, he said no. When asked if the need for Oxycontin and Oxycodone has increased, he said yes, and he understands from his physician that he is at the maximum prescription for those substances. He explained to the Board that he also takes Effexor which has controlled his panic anxiety disorder for years. He currently takes 150 milligrams per day and has discussed upping it to 225 milligrams per day. Respondent said he saw Dr. Ridgeway about a month ago and sees him every two months. Dr. Ridgeway is a medical doctor in family practice. When Dr. Olinger-Stine asked if he felt it was okay for the pharmacist to give him a bogus DEA number, he said he takes all the blame for the writing of the prescriptions. Dr. Morrow asked if he knew it was against the law for optometrist to write controlled substance prescriptions, he answered yes. Dr. Hunter pointed out that he also wrote a prescription for Mr. Munsey and was questioned when he went to fill the prescription. The pharmacist said there was something wrong with it. He stated he did not go back to fill the prescription with the intention of him writing the prescription, having Mr. Munsey fill it and give it back to him. He stated he is in a partnership with 20/20 Vision and is the only optometrist in the practice. Mr. Hamilton asked Respondent if he has taken any of the medications outside of the way they were prescribed, he said no, he only takes as prescribed. Respondent indicated he has not had an addictionologist examination but considers himself a recovering addict. He contends that his abuse of prescriptions is currently under control stating he knew it was wrong to take more than he should have but it is a mental addiction more than a physical addiction and

feels it is easier to keep under control than if it was physical. Respondent feels he probably did not do as good of a job when he was abusing prescriptions. When asked if he is using now as prescribed for his fibromyalgia, he said yes. When asked if the quantity of medications he is taking has decreased since seeking therapy from Dr. Moe, he said the usage has decreased and has talked of substitutes for some of the things he is being prescribed but has not done so as of yet. When asked in a best case scenario how he is intending to go on with this, counsel stated he does not insist on taking the medications and does not want to continue. Respondent indicated he still has neck and back problems and continues to take the pain medications for this. Dr. Golightly asked if Dr. Ridgeway is aware of all the prescriptions he has been writing or taking and he said no. Respondent told the Board he is no longer writing prescriptions for himself. The State asked Respondent to explain appointments with Dr. Ridgeway every two months. He explained that he asks Dr. Ridgeway about his tolerance for pain, they check his weight, blood pressure and how medications are working. They discuss his anxiety disorder and basically see him for input on his treatment plan. Dr. Morrow asked if the State has ever received any patient complaints against Respondent, the State answered no. The State closed with speaking if whether or not Respondent is a clear danger to the public. Mr. Mader pointed out he is taking a lot of medications that are very strong and serious medications, reminding the Board that Schedule II drugs are as potent as they get outside of illegal substances and the more you take the more you need. The State would like to see Respondent to seek treatment outside of therapy with Dr. Moe and seeking advice of his family physician. They would like to see Dr. Moe get Respondent into a program at Resurrection/Rush Hospital located in Chicago, Illinois, which is an intensive outpatient rehabilitation program where he stays within a clinic but goes to the hospital for treatment for a period of approximately six weeks. The State would feel better if he did a program of this nature and it would not only be beneficial to consumers, but to Respondent as well. He indicates the types of medications he takes are the kind that once you have taken the maximum there is no benefit to continue taking them. The State feels Respondent does not have his life and would be able to get it back with treatment. Defense counsel closed with the agreement of the Schedule II drugs statement made by the State but points out that you can plainly see he started out with small dosages and has had to up the doses to benefit from it. Defense states that this happened back in May 2009 and there is no evidence that he has taken any of these medications outside of how they are prescribed and there have been no patient complaints. Mr. Hamilton requests that the Board not take his license, his livelihood, due to this as he is not an immediate or remote danger to the public at this time. Legal counsel advised this is a hearing for emergency suspension and not a disciplinary hearing; they either need to suspend his license or don't suspend his license. Counsel advised the Board that if they suspend Respondent for 90 days they can then discipline him at the end of that time, but if they do not suspend for any amount of time, they cannot discipline him today. The Board

sympathizes with Respondent, but is concerned regarding him practicing under the influence and feels he intended to distribute controlled substances to other people that should have not had them. The Board pointed out it is a clear violation of optometry law and it was repeated time and time again. They feel it is a matter of control in which he cannot do. This is clearly an abuse of drugs but does point out he has started taking medications as prescribed and is working on his addiction. They feel Respondent knew he was breaking the law at the time he was doing so as he stated in testimony and also feels there would be some type of impairment to cognitive skills taking the type and quantity of medications he is on. They would like to see proof that he is not a danger to the public and would like to see a report from an addictionologist regarding his issues.

Board action: A motion was made and seconded to suspend Dr. Montgomery's optometry license for a period of ninety (90) days.

GOLIGHTLY/OLINGER-STINE

Board action: After discussion, an amended motion was made and seconded to amend the suspension of Dr. Montgomery's optometry license to a period of forty-five (45) days.

VAN CLEAVE/OLINGER-STINE

Board action: After further discussion, Dr. Olinger withdrew her second to the amended motion and the original motion of a ninety (90) day emergency suspension of Dr. Montgomery's optometry license stands.

GOLIGHTLY/OLINGER-STINE

Motion carried 4-1-0

*Dr. Van Cleave voted against

VI. DISCUSSION

A. Proposed Administrative Rule

1. Self study total of 4 hours would like changed to 20% instead of 10% so it will up it to 8 hours of self study.
2. Section 18 – change (5) to read; the number of clock hours and type of continuing education requested.
3. Make consistent between speaker, lecturer or faculty member
4. 852 IAC 1-16-8(8) – National or regional organizations accredited as a provider for ophthalmic continuing education by the accreditation counsel by medical continuing education.
5. Section 26 – change required to passing.

Board action: A motion was made and seconded to move the rules forward with the intent to publish for propagation.

VAN CLEAVE/GOLIGHTLY
Motion carried 5-0-0

VII. CONTINUING EDUCATION

1. Dr. Hunter has been contacted by some providers that did not meet the sixty (60) day time frame in applying for continuing education hours which is currently in the rules. He asked if the Board needs to have them come for personal appearance or if they can be approved or denied outside of making a personal appearance. Dr. Hunter said the ones that qualify for legend drug, he approves for that if they do not meet the application deadline, instead of approving or denying the IOB. The Board decided to allow Dr. Hunter to determine whether the applicant needs to make a personal appearance for applications that do not make the current sixty (60) day rule as that is one of the rules currently being amended.
2. Dr. Hunter discussed the issue of whether an observation visit at a clinic for 4 or 6 hours can constitute continuing education. He asked how he should handle continuing education applications for these "mini-fellowships". The Board agreed they must have handouts and teaching tools from LASIK. Dr. Hunter will work with Ms. Hollcraft on a specific list of things they need to present.

VIII. APPLICATION REVIEW

A. Endorsement Applications

There were no endorsement applications for the Board to review.

B. Examination Applications

There were no examination applications for the Board to review.

C. Faculty Limited License

There were no faculty limited license applications for the Board to review.

D. Professional Corporation Applications

There were no professional corporation applications for the Board to review.

IX. PROBATIONARY REPORT

There were no probationary reports to review.

X. REPORTS

A. Consumer Complaints

Dr. Van Cleve received no consumer complaints for review.

B. Indiana Optometric Association

Dr. Golightly had nothing to report to the Board from the Indiana Optometric Association. Barbara McNutt from the Indiana Optometric Association informed the Board there is a seminar scheduled for today as a last chance seminar.

C. Continuing Education

Dr. Hunter has reviewed 43.5 hours submitted for optometry credit and approved 37.5 of those hours with 6 hours denied. He reviewed 29 hours submitted for legend drug credit and approved 28 of those hours.

XI. OLD/NEW BUSINESS

1. The Board changed the next meeting of the Board from May 12th to May 5, 2010.
2. Ms. Vaught discussed renewals. Everyone was reminded they should renew online. Personal appearances for positive responses will be scheduled for the May 5, 2010 meeting of the Board.
3. Ms. Vaught discussed with the Board agency changes. There has been yet another reduction in the agency budget. This has caused a change in the way pocket cards are issued. New licensees will now have to go online and order a pocket card/wall certificate upon being issued their license number. The agency is hoping that the online renewal is used more. It is faster and more convenient for the practitioners. We now give the Indiana jurisprudence examination by email. Our office is no longer scheduling applicants to come to our facility to take a paper and pencil examination and it will no longer be offered through NBEO with Part 3 of the national

examination. A new online examination was also discussed but nothing set as of yet. Association dues are not being paid if we do not rely on the association for examination scores. This means dues to ARBO will not be paid for 2010, if we do not pay dues, members can attend the meetings, they will just not be able to vote at ARBO meetings. Ms. Vaught asked if any members would like to proctor the national examination in which it the Board declined at this time.


4. MAX BAILEY, O.D., submitted his application for renewal. He responded yes to a malpractice action. There was a malpractice judgment in April 2009 but settled in the practitioners favor. Practitioner was not found guilty of malpractice. Dr. Morrow asked the Board if they agreed on renewing Dr. Bailey's license or whether they wanted him to make a personal appearance at the May 5, 2010 meeting. General consensus of the Board was to have Ms. Vaught ask for more information regarding the resolution of the settlement and Dr. Olinger-Stine will review.

XII. ADJOURNMENT

There being no further business, and having completed its duties, the meeting of the Indiana Optometry Board adjourned at 2:00 p.m.

Board action: A motion was made and seconded to adjourn the Indiana Optometry Board meeting.


VAN CLEAVE/OLINGER-STINE
Motion carried 5-0-0



Douglas C. Morrow, O.D., President

5/5/10

Date



Natalie Olinger-Stine, O.D., Secretary

Date